PATENT COOPERATION TREATY

From the INTERNATIONAL BUREAU

PCT

NOTIFICATION CONCERNING TRANSMITTAL OF COPY OF INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY (CHAPTER I OF THE PATENT COOPERATION TREATY) (PCT Rule 44bis.1(c))

To:

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Date of mailing *(day/month/year)*	
21 January 2010 (21.01.2010)	
Applicant's or agent's file reference	IMPORTANT NOTICE
02103-778WO1	

International application No.	International filing date *(day/month/year)*	Priority date *(day/month/year)*
PCT/US2008/065653	03 June 2008 (03.06.2008)	06 July 2007 (06.07.2007)

Applicant

BOSE CORPORATION et al

The International Bureau transmits herewith a copy of the international preliminary report on patentability (Chapter I of the Patent Cooperation Treaty)

The International Bureau of WIPO 34, chemin des Colombettes 1211 Geneva 20, Switzerland	Authorized officer Yoshiko Kuwahara
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Form PCT/IB/326 (January 2004)

PATENT COOPERATION TREATY

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INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY
(Chapter I of the Patent Cooperation Treaty)

(PCT Rule 44*bis*)

Applicant's or agent's file reference 02103-778WO1	**FOR FURTHER ACTION**	See item 4 below
International application No. PCT/US2008/065653	International filing date *(day/month/year)* 03 June 2008 (03.06.2008)	Priority date *(day/month/year)* 06 July 2007 (06.07.2007)
International Patent Classification (8th edition unless older edition indicated) See relevant information in Form PCT/ISA/237		
Applicant BOSE CORPORATION		

1. This international preliminary report on patentability (Chapter I) is issued by the International Bureau on behalf of the International Searching Authority under Rule 44 *bis*.1(a).

2. This REPORT consists of a total of 11 sheets, including this cover sheet.

   In the attached sheets, any reference to the written opinion of the International Searching Authority should be read as a reference to the international preliminary report on patentability (Chapter I) instead.

3. This report contains indications relating to the following items:

☒	Box No. I	Basis of the report
☒	Box No. II	Priority
☒	Box No. III	Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
☒	Box No. IV	Lack of unity of invention
☒	Box No. V	Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
☐	Box No. VI	Certain documents cited
☐	Box No. VII	Certain defects in the international application
☒	Box No. VIII	Certain observations on the international application

4. The International Bureau will communicate this report to designated Offices in accordance with Rules 44*bis*.3(c) and 93*bis*.1 but not, except where the applicant makes an express request under Article 23(2), before the expiration of 30 months from the priority date (Rule 44*bis*.2).

	Date of issuance of this report 12 January 2010 (12.01.2010)
The International Bureau of WIPO 34, chemin des Colombettes 1211 Geneva 20, Switzerland	Authorized officer Yoshiko Kuwahara
Facsimile No. +41 22 338 82 70	e-mail: pt07.pct@wipo.int

Form PCT/IB/373 (January 2004)

PATENT COOPERATION TREATY

From the
INTERNATIONAL SEARCHING AUTHORITY

To:

see form PCT/ISA/220

PCT

WRITTEN OPINION OF THE INTERNATIONAL SEARCHING AUTHORITY

(PCT Rule 43*bis*.1)

Date of mailing
(day/month/year) see form PCT/ISA/210 (second sheet)

Applicant's or agent's file reference
see form PCT/ISA/220

FOR FURTHER ACTION
See paragraph 2 below

International application No.	International filing date *(day/month/year)*	Priority date *(day/month/year)*
PCT/US2008/065653	03.06.2008	06.07.2007

International Patent Classification (IPC) or both national classification and IPC
INV. G11B27/34
ADD. G11B27/10

Applicant
BOSE CORPORATION

1. This opinion contains indications relating to the following items:

   - ☒ Box No. I Basis of the opinion
   - ☒ Box No. II Priority
   - ☒ Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
   - ☒ Box No. IV Lack of unity of invention
   - ☒ Box No. V Reasoned statement under Rule 43*bis*.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
   - ☐ Box No. VI Certain documents cited
   - ☐ Box No. VII Certain defects in the international application
   - ☒ Box No. VIII Certain observations on the international application

2. **FURTHER ACTION**

   If a demand for international preliminary examination is made, this opinion will usually be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA") except that this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notifed the International Bureau under Rule 66.1*bis*(b) that written opinions of this International Searching Authority will not be so considered.

   If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of 3 months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

   For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

Name and mailing address of the ISA:	Date of completion of this opinion	Authorized Officer
European Patent Office - P.B. 5818 Patentlaan 2 NL-2280 HV Rijswijk - Pays Bas Tel. +31 70 340 - 2040 Tx: 31 651 epo nl Fax: +31 70 340 - 3016	See form PCT/ISA/210	Bruma, Cezar Telephone No. +31 70 340-4984

WRITTEN OPINION OF THE INTERNATIONAL SEARCHING AUTHORITY

International application No.
PCT/US2008/065653

Box No. I Basis of the opinion

1. With regard to the **language**, this opinion has been established on the basis of:

   ☒ the international application in the language in which it was filed

   ☐ a translation of the international application into , which is the language of a translation furnished for the purposes of international search (Rules 12.3(a) and 23.1 (b)).

2. ☐ This opinion has been established taking into account the **rectification of an obvious mistake** authorized by or notified to this Authority under Rule 91 (Rule 43bis.1(a))

3. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:

   a. type of material:

      ☐ a sequence listing

      ☐ table(s) related to the sequence listing

   b. format of material:

      ☐ on paper

      ☐ in electronic form

   c. time of filing/furnishing:

      ☐ contained in the international application as filed.

      ☐ filed together with the international application in electronic form.

      ☐ furnished subsequently to this Authority for the purposes of search.

4. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.

5. Additional comments:

Box No. II Priority

1. ☒ The validity of the priority claim has not been considered because the International Searching Authority does not have in its possession a copy of the earlier application whose priority has been claimed or, where required, a translation of that earlier application. This opinion has nevertheless been established on the assumption that the relevant date (Rules 43*bis*.1 and 64.1) is the claimed priority date.

2. ☐ This opinion has been established as if no priority had been claimed due to the fact that the priority claim has been found invalid (Rules 43*bis*.1 and 64.1). Thus for the purposes of this opinion, the international filing date indicated above is considered to be the relevant date.

3. Additional observations, if necessary:

Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability

The questions whether the claimed invention appears to be novel, to involve an inventive step (to be non obvious), or to be industrially applicable have not been examined in respect of

☐ the entire international application

☒ claims Nos. 12-19

because:

☐ the said international application, or the said claims Nos. relate to the following subject matter which does not require an international search *(specify)*:

☐ the description, claims or drawings *(indicate particular elements below)* or said claims Nos. are so unclear that no meaningful opinion could be formed *(specify)*:

☐ the claims, or said claims Nos. are so inadequately supported by the description that no meaningful opinion could be formed *(specify)*:

☒ no international search report has been established for the whole application or for said claims Nos. 12-19

☐ a meaningful opinion could not be formed without the sequence listing; the applicant did not, within the prescribed time limit:

- ☐ furnish a sequence listing on paper complying with the standard provided for in Annex C of the Administrative Instructions, and such listing was not available to the International Searching Authority in a form and manner acceptable to it.
- ☐ furnish a sequence listing in electronic form complying with the standard provided for in Annex C of the Administrative Instructions, and such listing was not available to the International Searching Authority in a form and manner acceptable to it.
- ☐ pay the required late furnishing fee for the furnishing of a sequence listing in response to an invitation under Rules 13*ter*.1(a) or (b).

☐ a meaningful opinion could not be formed without the tables related to the sequence listings; the applicant did not, within the prescribed time limit, furnish such tables in electronic form complying with the technical requirements provided for in Annex C-*bis* of the Administrative Instructions, and such tables were not available to the International Searching Authority in a form and manner acceptable to it.

☐ the tables related to the nucleotide and/or amino acid sequence listing, if in electronic form only, do not comply with the technical requirements provided for in Annex C-*bis* of the Administrative Instructions.

☐ See Supplemental Box for further details

Box No. IV Lack of unity of invention

1. ☒ In response to the invitation (Form PCT/ISA/206) to pay additional fees, the applicant has, within the applicable time limit:

   ☐ paid additional fees

   ☐ paid additional fees under protest and, where applicable, the protest fee

   ☐ paid additional fees under protest but the applicable protest fee was not paid

   ☒ not paid additional fees

2. ☐ This Authority found that the requirement of unity of invention is not complied with and chose not to invite the applicant to pay additional fees.

3. This Authority considers that the requirement of unity of invention in accordance with Rule 13.1, 13.2 and 13.3 is

   ☐ complied with

   ☒ not complied with for the following reasons:

   see separate sheet

4. Consequently, this report has been established in respect of the following parts of the international application:

   ☐ all parts.

   ☒ the parts relating to claims Nos. 1-11

Box No. V Reasoned statement under Rule 43*bis*.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Yes: Claims	7,8,10,11
	No: Claims	1,2,3,4,5,6,9,
Inventive step (IS)	Yes: Claims	
	No: Claims	1-11
Industrial applicability (IA)	Yes: Claims	1-11
	No: Claims	

2. Citations and explanations

see separate sheet

Box No. VIII Certain observations on the international application

The following observations on the clarity of the claims, description, and drawings or on the question whether the claims are fully supported by the description, are made:

see separate sheet

1. Reference is made to the following documents; the numbering will be adhered to in the rest of the procedure:

   D1: WO 02/095611 A (KONINKL PHILIPS ELECTRONICS NV [NL]; BUIL VINCENTIUS P [NL]) 28 November 2002 (2002-11-28)

Re Item IV.
Lack of unity of invention

2. The application does not comply with the requirements of unity of invention set forth in Rule 13 PCT. The application relates to three inventions or groups of inventions which are **not** so linked as to form a single general inventive concept.

2.1 As far as the claims can be understood and with due consideration to the description, the separate inventions/groups of inventions are:

Invention 1: **claim 1:** method of providing an indication (on a GUI) of the state (freshness or amount) of music content, where the state is updated based on the user's interaction with the content;

Invention 2: **claim 12:** medium with instructions to implement a method of selection on a user interface of a track from a plurality of tracks represented as a plurality of cells arranged on a two-dimensional grid (on the graphic user interface), where cells/tracks along each line in a first direction have a same attribute value (corresponding to same prescribed criteria), while cells/tracks along lines in a second direction have different attribute values (do not fit a same prescribed criteria);

Invention 3: **claims 18:** method of creating a user profile in a player, starting from a log file containing user reactions to listening to the tracks.

2.2 Said inventions are not so linked as to form a single general inventive concept (Rule 13.1 PCT), the reasoning being as follows:

i. The independent claims are: 1, 12 and 18.

ii. The set of technical features that are same or corresponding in all the independent claims, contains **only one** technical feature: "content player". This feature is considered as being implicit in each of said claims.

Claims 1 and 12 entail, among other, displaying some information on a graphic user interface.

In claim 1, this information indicates some characteristic of a body of content, as freshness or amount, which matches user interaction with the content (possibly user preferences).

In claim 12, this information is a classification of available tracks.

Claim 18 entails creating a user profile.

Therefore all independent claims have as same or corresponding features **only** the feature "content player", which is considered to be implicit to each of them. Or, in other words, the only common characteristic of all the independent claims is that they are related to a *content player.*

iii. The single, i.e. common, general concept formulated for all independent claims is: *by using a content player, provide some service to the user* (i.e. display some particular information on a graphic user interface, OR enable selection of tracks, OR create a user profile).

Said single general concept is formulated based on said technical feature common to all claims.

The formulation of said single general concept is considered to be the *most restrictive possible*, i.e. not adding any subject-matter beyond that defined by said same technical feature.

iv. The objectives of the three claimed inventions are obvious, and clearly not related, namely:

- to provide an indication of a characteristic of a body of content, as freshness or amount, that match user interaction with the content;

- to select tracks to be reproduced; and

- to create a user profile.

v. Music content players were well-known in the art at the priority date of the present application. In particular from D1, an audio player is known, which obviously is capable of providing services to the user, e.g. displaying information regarding the tracks, or selecting tracks for playback.

Hence the single general concept formulated above in paragraph 2.2.iii is known from prior art and therefore **not inventive.** Hence there is **no single general *inventive* concept.**

vi. Since there is no single general inventive concept, the requirements of Rule 13.1 PCT are not met. **The application lacks unity of invention.**

vii. Only the first invention mentioned above under paragraph 2.1 has been searched.

Re Item V.
Reasoned statement with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

This Written Opinion is restricted to claims 1-11, i.e. the only claims covered by the International Search Report.

3. INDEPENDENT CLAIMS

Notwithstanding the lack of clarity and support indicated below in paragraph 5 of this Written Opinion, the present application does not meet the criteria of Article 33(1) PCT, because the subject-matter of claim 1, as far as it can be understood on the basis of the description, is **not new** in the sense of Article 33(2) PCT.

3.1 Document D1 discloses (the references in parentheses applying to this document):

A method of providing an indication (fig. 3) of a state (amount - items 370 in fig. 3 and lines 30-33 of page 5 of the description: "dynamic update of the stack of items 370 so that it will meet the new criteria"; see also "freshness" and "popularity" in fig. 3 and on lines 28-33 of page 2, lines 9-13 of page 5, lines 13-17 of page 4 of the description) of a body of content, the body of content including at least a portion of a track (items 370 in fig. 3), the indication being updated based on a user's interaction with the content ("dynamic" on lines 30-33 of page 5; "how frequent and how recent an item was accessed" on lines 13-17 of page 4 indicates interaction with the content), the body of content matching some user preferences (see the two "sliders" 310/320 and 350/360 in fig. 3 and in the paragraph between line 16 of page 5 and line 3 of page 6; "slider" 310/320 in fig. 3 sets the user preferences, e.g. the "popularity".)

Therefore the subject-matter of claim 1 is **not new** in the sense of Article 33(2) PCT.

4. DEPENDENT CLAIMS

The dependent claims 2-11 add minor limiting features to the method defined in the independent claim 1 all of which, insofar as they are not explicitly disclosed in D1, relate to routine measures to be normally expected of the skilled person. Thus these claims, to the extent that they are not lacking novelty (Article 33(2) PCT), lack an inventive step (Article 33(3 PCT)), and therefore the requirements of Article 33(1) PCT are not met.

Re Item VIII.

Lack of clarity and/or support in the description.

5. The application does not comply with the requirements of clarity and support of the claims set forth in Art. 6 PCT.

5.1 The term "state" used in claim 1 on line 2 of page 1 of the claims and defined in a first instance as " of a body of content" is unclear and leaves the reader in doubt as to the meaning of the technical feature(s) to which it refers, thereby rendering the definition of the subject-matter of said claim unclear (Article 6 PCT).

5.2 Claim 1 further re-defines said "state" on lines 4-5 of page 1 of the claims as "comprising information about the user's preferences with respect to the body of content.", which is something else than a state as such of a "body of content", since some "user's preferences" cannot be considered as a state as such of some "body of content".

5.3 When turning to the description for clarification and support, the skilled person finds that the embodiment of the invention described in the section between line 19 of page 10 and line 15 of page 11 of the description, which is believed to be the base for claim 1, **does not fall within the scope of claim 1**, because the indicator showed in said embodiment does not show user's preferences as such with respect to the body of content, but "how much of a category of music (such as those tracks that match the user preferences) remains on the device that has not yet been played" on lines 23-25 of page 10 of the description.

5.4 This inconsistency between the claims and the description leads to doubt concerning the matter for which protection is sought, thereby **rendering the claims unclear, Article 6 PCT.**